

1 ARL R. LINDEGREN (SBN 125914)  
klindegren@fisherphillips.com  
2 SHAUN J. VOIGT (SBN 265721)  
svoigt@fisherphillips.com  
3 FISHER & PHILLIPS LLP  
2050 Main Street, Suite 1000  
4 Irvine, California 92614  
Telephone (949) 851-2424  
5 Facsimile (949) 851-0152

6 Attorneys for Defendant,  
WIZARDS OF THE COAST, LLC  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 ADAM SHAW, PETER  
12 GOLIGHTLY, JUSTIN TURNER,  
and JOSHUA STANSFIELD, as  
13 individuals and on behalf of others  
similarly situated and the general  
14 public,

15 Plaintiffs,

16 v.

17 WIZARDS OF THE COAST, LLC,  
18 Defendant.

Case No: 5:16-cv-01924-EJD

**DEFENDANT'S EVIDENTIARY  
OBJECTIONS TO THE  
DECLARATION OF JUSTIN TURNER  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR CONDITIONAL  
CERTIFICATION**

**Date:** November 9, 2017  
**Time:** 9:00 a.m.  
**Ctrm.:** 4

*[Filed concurrently with Opposition Brief;  
Declarations of Helene Bergeot, Paul  
Bazakas, Shaun J. Voigt; Objection to the  
Declarations of Ross Cornell, Peter  
Golightly, Tyler Morrison, Brad  
Rutherford, Adam Shaw, and Joshua  
Stansfield]*

Complaint Filed: April 12, 2016

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24 Defendant WIZARDS OF THE COAST LLC (hereinafter "Wizards" or  
25 "Defendant"), submits the following objections to evidence filed by Justin Turner  
26 in support of Plaintiffs ADAM SHAW, PETER GOLIGHTLY, JUSTIN  
27 TURNER, and JOSHUA STANSFIELD's (collectively "Plaintiffs") Motion for  
28 Conditional Certification, as follows:

<u>ef:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
1.	I have worked as a judge for Wizards of the Coast, LLC (hereinafter "Wizards") .... [Para. 4, Page 2, Lines 7-9]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness ( <i>Federal Rules of Evidence</i> §§701, 702; <i>Hangarter v. Provident Life &amp; Accident Ins. Co.</i> , 373 F.3d 998, 1016-17 (9th Cir. 2014) ("No witness-expert or non-expert-should opine on the ultimate legal conclusion, which is provide of the court"))
2.	From the time I decided to become involved as a Magic judge, Wizards and its agents told me that Magic judges are "volunteers" and were/are a part of a "non-profit organization." [Para. 6, Page 2, Lines 13-15]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)
3.	Many other Magic judges that I communicated with regularly regarding their status as "volunteers" for Wizards shared the same belief about being "volunteers" for a "non-profit," which was also based on statements made to them by	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602); Hearsay ( <i>Federal Rules of Evidence</i> §802)

<u>ef:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
	Wizards. [Para. 6, Page 2, Lines 15-18]	
4.	When I decided to become a Magic judge, Wizards told me that Magic was the most prominent organized play program in the world. [Para. 11, Page 3, Lines 1-2]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)
5.	Wizards instructed me to play my role as a volunteer, and to follow all of Wizards' guidelines. [Para. 11, Page 3, Lines 2-3]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)
6.	Wizards made me understand that being committed to learning all of the Magic rules and policies was instrumental in providing Magic players with the experience they deserve and to ensuring that I could provide Magic players with the comprehensive Wizards' gaming experience. [Para. 11, Page 3, Lines 3-5]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)
7.	Based on my years of experience as a Magic judge, I know what Magic Judges do, how much time they spend performing those	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness ( <i>Federal Rules of</i>

<u>ef:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
	duties, and how Wizards controls or regulates those duties without properly paying judges for their work performed. [Para. 12, Page 3, Lines 7-9]	<i>Evidence</i> §§701, 702)
8.	In addition, I know about the experiences of other Magic Judges from regular conversations I have had with hundreds of other Magic judges and from participating in online discussions about Magic gameplay, judging and Wizards' policies. [Para. 12, Page 3, Lines 9-11]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602); Hearsay ( <i>Federal Rules of Evidence</i> §802)
9.	In fact, Wizards sets and enforces strict requirements in order for an individual either to become a judge or move up in judge level. [Para. 13, Page 3, Lines 14-15]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)
10.	Wizards' requires level 1 judges to judge a minimum of 2 events, which requires at least 8 hours. [Para. 13, Page 3, Lines 15-16]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)
11.	It also requires Level 1 Magic judges to take a written test which is approximately 2-3 hours in	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)

<u>ef:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
	length and requires 20-30 hours of study time. [Para. 13, Page 3, Lines 16-17]	
12.	Wizards policies also required me to work enough events as a level 1 judge to obtain the approval and recommendation of other higher level judges. [Para. 14, Pages 3-4, Lines 27-1]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness ( <i>Federal Rules of Evidence</i> §§701, 702)
13.	Continuing as a Magic judge also requires specialized training and skill in a complex set of rules and constantly changing policies. [Para. 15, Page 4, Lines 3-4]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)
14.	Wizards' updates and/or changes its policies about every three months, and I and other judges are/were required to spend the time necessary to learn and stay apprised of policy changes so that we can implement them into our work as judges. [Para. 15, Page 4, Lines 4-6]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)
15.	Wizards could not conduct Magic events without judges, including hundreds of judges like me,	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602); Irrelevant

<u>ef:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
	performing substantial labor, as set forth above. [Para. 17, Page 4, Lines 19-19]	<i>(Federal Rules of Evidence §402); Improper opinion of a lay witness (Federal Rules of Evidence §§701, 702)</i>
16.	These judges constitute the vast majority and bulk of the work force that allows Wizards to conduct its sanctioned events – regardless of the format of the Wizards’ sanctioned event i.e. whether it is a one-day or multi-day event. [Para. 17, Page 4, Lines 19-21]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence §602</i> ); Improper opinion of a lay witness ( <i>Federal Rules of Evidence §§701, 702</i> )
17.	I also learned that other Magic judges worked similar hours at one- day and multi-day events as me by conferring with those judges on-line. [Para. 19, Page 5, Lines 11-12]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence §602</i> ); Improper opinion of a lay witness ( <i>Federal Rules of Evidence §§701, 702</i> ); Hearsay ( <i>Federal Rules of Evidence §802</i> )
18.	My work schedule at Wizards’ Magic sanctioned events was determined by Wizards, whose hiring and scheduling decisions were implemented by head judges operating in accordance with Wizards’ policies and procedures	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence §602</i> ); Improper opinion of a lay witness ( <i>Federal Rules of Evidence §§701, 702</i> )



<u>ef:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
	and under Wizards' supervision. [Para. 20, Page 5, Lines 12-14]	
19.	I was instructed by the head judge to wear a uniform consisting of a "DCI Judge" or "Magic Judge" shirt and black pants at Large Magic events. [Para. 21, Page 5, Lines 20-21]	Hearsay ( <i>Federal Rules of Evidence</i> §802)
20.	At smaller Magic events it was Wizards policy for me to wear the same uniform. [Para. 21, Page 5, Lines 21-22]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)
21.	I am specifically aware of the announcement by Wizards in or about Q3 of 2016, wherein Wizards informed the Magic judge community that tournament organizers ("TO's") would hire head judges directly for the events described in this paragraph. [Para. 21, Page 5, Lines 23-24]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness ( <i>Federal Rules of Evidence</i> §§701, 702)
22.	In addition to certification and uniform requirements, Wizards exercised other common forms of control over its Magic judges, even when it is involves personal	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness ( <i>Federal Rules of Evidence</i> §§701, 702)

<u>ef:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
	on-line activity. [Para. 22, Page 5, Lines 25-26]	
23.	Wizards' requires Magic judges to abide by its company standards and policies at all times while representing the Wizards brand. [Para. 22, Page 5, Lines 26-88]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)
24.	On its corporate website, Wizards displays that it benefits from "2800+ hours volunteered annually." [Para. 24, Page 6, Lines 6-7]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602); Violates the Best Evidence Rule ( <i>Federal Rules of Evidence</i> §1002)
25.	This issue of Wizards' refusal to reimburse Magic judges' expenses is a very common complaint among Magic judges. [Para. 26, Page 6, Lines 14-15]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602); Hearsay ( <i>Federal Rules of Evidence</i> §802)
26.	However, from my experience, Wizards exercised control over its Magic judges at all times, even when it is involves personal on-line activity. [Para. 27, Page 6, Lines 18-19]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness ( <i>Federal Rules of Evidence</i> §§701, 702)
27.	Wizards commands that Magic judges abide by its company standards and policies at all times	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)



<u>ef:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
	while representing the Wizards brand. [Para. 27, Page 6, Lines 19-20]	
28.	Wizards has had a policy of compensating Judges at Magic events with giveaways. [Para. 28, Page 6, Lines 21-23]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)
29.	Although the official policy is that most product support packages are intended for Magic players, it has been a rampant practice for Tournament Operators to use product support as compensation for judges, and it is commonly known and relied upon by judges. [Para. 28, Pages 6-7, Lines 26-2]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)
30.	Wizards has always exercised total control over the giveaways it provides to Magic judges at Magic events. [Para. 31, Page 7, Lines 9-10]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602); Improper opinion of a lay witness ( <i>Federal Rules of Evidence</i> §§701, 702)
31.	Wizards instructed me to play my role as a volunteer, and to follow all of Wizards' guidelines. [Para. 33, Page 7, Lines 18-19]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)

<u>ef:</u>	<u>Material Objected To:</u>	<u>Grounds for Objection:</u>
32.	Wizards made me understand that being committed to learning all of the Magic rules and policies was instrumental in providing Magic players with the experience they deserve and to ensuring that I could provide Magic players with the comprehensive Wizards' gaming experience. [Para. 33, Page 7, Lines 19-22]	Lacks foundation, personal knowledge ( <i>Federal Rules of Evidence</i> §602)

DATE: June 28, 2017

FISHER & PHILLIPS LLP

By: /s/ Shaun J. Voigt  
 KARL R. LINDEGREN  
 SHAUN J. VOIGT  
 Attorneys for Defendant,  
 WIZARDS OF THE COAST, LLC

**CERTIFICATE OF SERVICE**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Fisher & Phillips LLP and my business address is 444 South Flower Street, Suite 1500, Los Angeles, California 90071.

On June 28, 2017, I served the foregoing document **DEFENDANT'S EVIDENTIARY OBJECTIONS TO THE DECLARATION OF JUSTIN TURNER IN SUPPORT OF PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION** on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

**SEE ATTACHED MAILING LIST**

☒ **[by ELECTRONIC SUBMISSION]**- I served the above listed document(s) described via the United States District Court's Electronic Filing Program on the designated recipients via electronic transmission through the CM/ECF system on the Court's website. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document(s). Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities.

☒ **FEDERAL**- I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed June 28, 2017 at Los Angeles, California.

MARVIN JOHNSON

Print Name

By: /s/ Marvin Johnson

Signature

MAILING LIST

<p>           Matt Righetti, Esq.            John Glugoski, Esq.  <b>RIGHETTI GLUGOSKI, PC</b>            456 Montgomery St., Suite 1400            San Francisco, CA 94101            Telephone: (415) 983-0900            Facsimile: (415) 397-9005            Email: <a href="mailto:matt@righettilaw.com">matt@righettilaw.com</a>  <a href="mailto:jglugoski@righettilaw.com">jglugoski@righettilaw.com</a> </p>	<p>           Attorneys for Plaintiffs,  <b>ADAM SHAW, PETER</b>  <b>GOLIGHTLY, JUSTIN TURNER,</b>  <b>and JOSHUA STANSFIELD</b> </p>
<p>           Reuben D. Nathan, Esq.  <b>NATHAN &amp; ASSOCIATES, APC</b>            600 W. Broadway Ste.700            San Diego, CA 92101-3370            Telephone: (619) 272-7014            Facsimile: (619) 330-1819            Email: <a href="mailto:rnathan@nathanlawpractice.com">rnathan@nathanlawpractice.com</a> </p>	<p>           Attorneys for Plaintiffs,  <b>ADAM SHAW, PETER</b>  <b>GOLIGHTLY, JUSTIN TURNER,</b>  <b>and JOSHUA STANSFIELD</b> </p>
<p>           Ross Cornell, Esq.  <b>ROSS CORNELL, ESQ., APC</b>            111 W. Ocean Blvd., Suite 400            Long Beach, CA 90802            Telephone: (562) 612-1708            Facsimile: (562) 394-9556            Email: <a href="mailto:ross.law@me.com">ross.law@me.com</a> </p>	<p>           Attorneys for Plaintiffs,  <b>ADAM SHAW, PETER</b>  <b>GOLIGHTLY, JUSTIN TURNER,</b>  <b>and JOSHUA STANSFIELD</b> </p>
<p>           David Borgen, Esq.            James Kan, Esq.            Katharine Fisher, Esq.  <b>Goldstein, Borgen, Dardarian &amp; Ho</b>            300 Lakeside Drive, Suite 1000            Oakland, CA 94612            Telephone: (510) 763-9800            Facsimile: (510) 835-1417            Email: <a href="mailto:dborgen@gbdhlegal.com">dborgen@gbdhlegal.com</a> </p>	<p>           Attorneys for Plaintiffs,  <b>ADAM SHAW, PETER</b>  <b>GOLIGHTLY, JUSTIN TURNER,</b>  <b>and JOSHUA STANSFIELD</b> </p>
<p>           Michael Malk, Esq.  <b>MICHAEL MALK, ESQ. APC</b>            1180 S. Beverly Drive, Suite 302            Los Angeles, California 90035            Telephone: (310) 203-0016            Facsimile: (310) 499-5210            Email: <a href="mailto:mm@malklawfirm.com">mm@malklawfirm.com</a> </p>	<p>           Attorneys for Plaintiffs,  <b>ADAM SHAW, PETER</b>  <b>GOLIGHTLY, JUSTIN TURNER,</b>  <b>and JOSHUA STANSFIELD</b> </p>

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